



सत्यमेव जयते

आयुक्तकाकार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeal Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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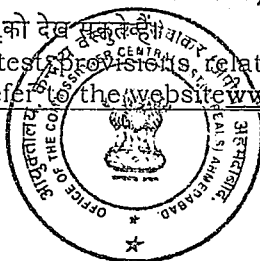


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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/471/2023 / 2665 - 21
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-JC-22/2023-24 and 30.06.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	04.07.2023
(ङ)	Arising out of Order-In-Original No. 30/AC/D/2022-23 dated 14.11.2022 passed by The Assistant Commissioner, Division-IV, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Modern Denim Ltd., 10 km Mile stone, Sarkhej Bavla Road, Moraiya, Ahmedabad-382210

(A)	इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देखें। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .



ORDER-IN-APPEAL**BRIEF FACTS OF THE CASE:**

M/s. Modern Denim Limited, 10 KM Mile Stone, Sarkhej Bavla N H No.8A, Village Moraiya, Tal -Sanand, Ahmedabad, Gujarat - 382 210 (hereinafter referred to as the "appellant") has filed the appeal on 19.01.2023 against Order-in-Original No. 30/AC/D/2022-23/AM dated 14-11-2022 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST & C. Ex., Division-IV, Ahmedabad North Commissionerate (hereinafter referred to as the "adjudicating authority") for inadmissible credit of input tax of CENVAT alongwith credit of VAT wrongly claimed in Transitional Credit (TRAN-1) amounting to Rs. 32,91,372/-.

2. Brief facts of the case in the present appeal is that the appellant registered under GSTIN 24AABCM0861H1ZS, have been engaged in the business of manufacturing and supply of Denim Fabrics falling under Chapter Head 52094200 & 52114200 and Cotton Yarn falling under Chapter Head 52051110. During the audit of the financial records and returns of the appellant and verification of TRAN-1 carried out for the period from July-2014 to June-2017, it has been observed that the appellant have carried forward the credit of VAT in respect of "inputs held in stock and inputs contained in semi-finished goods or finished goods held in stock" into Electronic Credit Ledger as CGST Credit, whereas, transfer of credit of VAT into CGST in Electronic Credit Ledger as CGST Credit, is not permissible as per Section 140 of the CGST Act, 2017. The appellant have wrongly transitioned credit of VAT amounting to Rs. 57,14,209/- as Central Tax (CGST). Since the appellant was not agreed with the objection raised by the audit party, Final Audit report No. 335/2018-19 (Central Excise / Service Tax) dated 01.10.2019 was issued to the appellant. Further, it has also observed that CERA Audit has issued Half Margin Memo No. 79 dated 06.04.2021 for verification of TRAN-1, wherein following observations were made:

(i) During test check of TRAN-1 records, in the case of M/s. Modern Denim Limited, it is noticed that the taxpayer has carried forward transitional credits accumulated in respect of input and finished/semi-finished goods amounting to Rs. 57,14,209/- in table 7a.

(ii) As per the TRAN statement, the taxpayer has claimed credit in table 7(a) of TRAN as under:

CENVAT on stock of input is Rs. 11,51,869/-

CENVAT on stock of finished / semi-finished goods is Rs. 45,16,187/-.

(iii) Scrutiny of supporting sample invoices and statement revealed that credit of central taxes excess was taken though, as per the sample invoices on VAT was paid. There is no evidence of payment of central tax in r/o invoices on which central tax credit claimed in the TRAN-1.

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(iv) As the central tax was not paid, credit cannot be taken as central tax under transitional provisions. This resulted in incorrect claim of transitional credit of central tax.

Accordingly, a Show Cause Notice F. No. V/27-74/Modern.SCN/2021-22 dated 14.02.2022 was issued to the appellant for demand of ITC of Rs. 57,14,209/- under section 73(1) of the CGST Act, 2017 alongwith interest and penalty. Subsequently, the aforesaid show cause notice was adjudicated by the adjudicating authority and confirmed demand of Input Tax Credit of Rs. 32,91,372/- under section 73(1) of the CGST Act, 2017 (whereas, demand of Input Tax Credit of Rs. 24,22,837/- has been dropped) with interest and imposed penalty of Rs. 3,29,137/- under Section 122(2) of CGST Act, 2017 read with the relevant portion of the SGST Act, 2017.

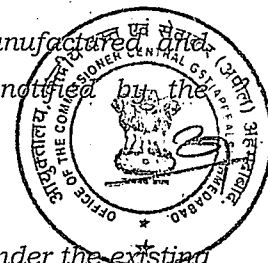
3. Being aggrieved with the impugned order, the appellant preferred the present appeal on 19.01.2023 on the following grounds:

- The appellant were availing benefit of input tax credit (ITC) of duty / tax paid on inputs, capital goods and input services under the provisions of CGST Act as well as under the relevant provisions of the erstwhile Central Excise Act, 1944 and /or the GVAT Act, 2003 during the period prior to 01.07.2017.
- With effect from 01.07.2017, GST regime as implemented and C.Ex, Service Tax, Value Added Tax (VAT), Central Sales Tax etc. were subsumed into the GST.
- As per Section 140(1) of the CGST Act, 2017, a registered person is entitled to take in his electronic credit ledger, the amount of CENVAT credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed.

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:

- (i) *Where the said amount of credit is not admissible as input tax credit under this Act; or*
 - (ii) *Where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or*
 - (iii) *Where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.*
- Further as per Section 140(3) and 140(4) of the CGST Act, 2017

"140 (3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated the 20th June, 2012 or a first stage dealer or a registered importer or a depot of manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs contained in semi-finished or finished [goods held in stock on the appointed



day, within such time and in such manner as may be prescribed, subject to the following conditions, namely:

- (i) Such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) The said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) The said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) Such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (v) The supplier of services is not eligible for any abatement under this Act;

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture or taxable as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994 (32 of 1994), but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,-

(a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

In view of the Section 140(1) of the CGST Act, 2017 allowed for availing credit in the electronic credit ledger on inputs held in stock and inputs contained in semi-finished or finished goods held in stock as on 01.07.2017 in following cases:

- (a) A registered persons under GST who was not liable to be registered under the existing law or who was engaged in the manufacture of exempted goods or providing exempted services or was providing works contract service and availing the benefit Notification No. 26/2012-ST;
- (b) A first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer;
- (c) A registered person under GST who was engaged in the manufacturer of taxable as well as exempted goods under the Central Excise Act, 1944 or providing taxable as well as exempted services under Chapter V of the Finance Act, 1994 but which are liable to tax under GST;

(d) A registered person under GST who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the Central Excise Act, 1944 or the Finance Act, 1994 or the GVAT Act, 2003.

3.1 Since the appellant was covered under the Category (C) above, the appellants were also eligible to avail credit of duty / tax paid under the erstwhile regime on the inputs held in stock and /or inputs contained in semi-finished or finished goods held in stock as on 01.07.2017. Further, as per Rule 117 of the CGST Rules, 2017 (inserted vide Notification no. 10/2017-Central Tax dated 28.06.2017, for a person to avail of the benefits of Section 140 of the CGST Act, 2017, a person would have to submit an electronic declaration in TRAN-1, and the Commissioner could extend the period by a further period not exceeding 90 days. The final extension was granted upto 27.12.2017. Accordingly, on 27.12.2017, the appellant filed their GST TRAN-1 for transitioning of credit balance already availed under the erstwhile Central Excise, Service tax and VAT regime into GST regime.

3.2 Further the appellant is also eligible to claim credit of duty / tax paid on the inputs held in stock in view of the provisions of Section 140(3) and 140(4) of the CGST Act, 2017 supra. The credit on stock of inputs was Rs. 11,51,869/-) and credit on inputs in stock of finished / semi-finished goods was Rs. 45,16,187/-. The appellant also availed credit of Rs. 46,153/- under Section 140(5) of the CGST Act, 2017 pertaining to inputs received on or after 01.07.2017. The details of credit availed by the appellants consisting of duties / taxes paid on inputs held in stock as on 30.06.2017 as uploaded in Form GST TRAN-1 and subsequently verified by the department.

Credit availed under Section of CGST Act, 2017	Column of Form GST TRAN-1	Total credit availed	Credit alleged to be wrongly taken
140(3)	7(a)	Rs. 57,14,209/-	Rs. 57,14,209/-

(Amount in Rs.)

Inputs contained in	Raw material / inputs stocks	Semi-finished goods stock	Finished goods stock	Goods in transit	Total	Credit ought to be taken in	Credit actually taken in
Excise duty	362890	505042	458932	46153	1373017	CGST	CGST
VAT & Addl. VAT	477313	900959	1711229	-	3089501	SGST	CGST
CVD	213941	281738	408508	-	904187	CGST	CGST
SAD	97725	101952	147827	-	347504	CGST	CGST
Total	1151869	1789691	2726496	46153	57142019		

From the above table, it is clarified by the appellant that although the actual credit availed on inputs, semi-finished goods and finished goods held in stock on 01.07.2017 was Rs. 56,68,056/-, and it was alleged by the audit that the appellants had wrongly availed credit of Rs. 57,14,209/- by also wrongly including the credit of Rs. 46,153/- availed on input goods in transit under Section 140(5) of the CGST Act, 2017. Out of the above Rs. 56,68,056/-, an amount of Rs. 30,89,501/- pertaining to **credit of VAT and additional VAT paid by the appellants** in the erstwhile regime, was **inadvertently carried forwarded into CGST head while filing Form GST TRAN-1.**

➤ Vide letter dated 24.02.2020, the appellant submitted their response stating that the credit accumulated in respect of inputs and was availed inadvertently due to unawareness and misunderstanding between various formal as available in Form GST TRAN-1 at the relevant time. The appellants further stated that they had uploaded the details of credit of inputs

held in stock and on inputs contained in semi finished goods or finished goods held in stock. However, the system took the entire credit (CENVAT + VAT) under the CGST credit head. Vide letter dated 9.11.2021, the appellants responded to requesting the department to **regularize the credit availed by them as there was no tax evasion and it was only a question of availing credit under CGST head instead of SGST head.** However, the department has not considered the request of the appellant and issued a Show Cause Notice bearing No. V/27-74/MODERN.SCN/2021-22/1255 dated 14.2.2022 proposing the demand and recover an amount of Rs. 57,14,209/- to be wrongly availed as ITC in GST TRAN-1 under proviso to Section 73(1) of CGST Act alongwith interest u/s 73(5) and penalty under Section 122(5) of the CGST Act, 2017.

- The appellants filed their detailed reply contesting the allegations in the aforesaid SCN, and appellant briefly contended as under:
 - (a) *SCN erroneously considers the entire credit of Rs. 57,14,209/- pertains to VAT / State Tax.*
 - (b) *SCN erred in appreciating that inadvertent and genuine mistakes in filling up correct details of credit in Form GST TRAN-1 would not preclude taxpayers from availing credit;*
 - (c) *Substantive benefit of carrying forward the eligible credit on input taxes cannot be denied to the appellants due to procedural lapses;*
 - (d) *Department ought to have granted the appellants an opportunity to rectify their mistake by debiting electronic credit ledger of CGST and later availing the same under SGST head;*
 - (e) *No interest can be charged and no penalty can be imposed.*
- The aforesaid Show Cause Notice was adjudicated by the adjudicating authority after giving an opportunity and conducting the personal hearing on 19.10.2022 and confirming the demand of Rs. 32,91,372/- under section 73(1) of CGST Act, 2017 under O-I-O No. 30/AC/D/2022-23/AM dated 14.11.2022.

3.3 The appellant further submitted that the impugned order to the extent of demand of Rs. 32,91,372/- is incorrect in law as well as on the facts and is liable to be quashed and set aside. The adjudicating authority failed to substantiate any findings of his own and has been done without any independent application of mind and scrutiny. The impugned order is vague, non-est and perverse as it merely reproduces the allegations in the show cause notice without any independent scrutiny, hence, it deserves to be quashed and set aside.

- The appellant ought to have been granted an opportunity to rectify their mistake by debiting the CGST electronic credit ledger, even otherwise, the substantive benefit cannot be denied to them due to procedural lapse on their part.
- No independent reasons were accorded in the impugned order for confirming the tax demand with interest and penalty. The appellant further relied upon on the following case laws:
 - (i) Cyril Lasardo V/s Juliana Maria Lasardo 2004 (7) SCC 431;
 - (ii) Assistant Commissioner, Commercial Tax Department Vs. Shukla & Brothers reported at 2010 (254) ELT 6(SC) = 2-11 (22) STR 105(SC);
 - (iii) Bidhanagar (Salt Lake) Welfare Association Vs. Central Valuation Board & Ors – 2007 (6) SCC 668;

In view of the above, the appellant submitted that the impugned order is a vague and non-speaking order and is thus, liable to quashed.

- The impugned order erred in demanding recovery of credit of Rs. 32,91,372/- on the ground that the said credit pertains to VAT / State Tax paid by the appellant on inputs in stock and/or inputs contained in semi-finished goods or finished goods lying in stock and credit was availed under the CGST head of the electronic credit ledger i.e under the Central Tax,

when no Central Tax was paid on such invoices. This assumption was made on examination of certain illustrative invoices of the appellants, bases on which such credit was availed.

➤ The impugned order erred in not considering that inadvertent and genuine mistakes in filling up correct details of credit in Form GST TRAN-1 would not preclude taxpayers from availing the credit. The appellant further submitted that assuming that there in lapse on their part to enter details in the correct heading in Form GST TRAN-1, it can only be considered as a procedural lapse for which substantive benefit of credit should not be denied to the appellants, which was otherwise eligible. In this support, the appellant made reliance on the following case laws:

- (i) Aadinath Industries Vs. Union of India- 2019 (30) GSTL 478 (Delhi);
- (ii) Lease Plan India Pvt. Ltd Vs. Govt. of NCT of Delhi – 2020 (72) GSTL 116 (Delhi);
- (iii) RR Distributors Pvt. Ltd. Vs. Commissioner, CGST, Delhi -2021 (6) TMI 10;
- (iv) Arora & Co. Vs. Union of India & Ors – 2020 (74) GSTL 290 (Delhi);

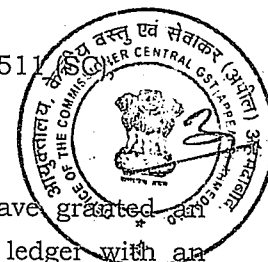
➤ The appellant further submitted that in the present case, it is not in dispute that the credit was eligible to the appellant i.e the credit was rightly availed on inputs used in making taxable supplies and that the tax on which credit was availed by the appellants was deposited by the supplier with the department. The eligibility of credit was also not in dispute under the erstwhile Central Excise or Service Tax regime or Sales Tax / Gujarat VAT regime. In such scenario, the credit of Rs. 32,91,372/- is a substantive vested right of the appellants.

➤ Even assuming that the appellants had inadvertently carried forward the credit pertaining to VAT under the CGST head mistakenly, it is a well known settled principle of law that substantiate benefit cannot be denied on account of procedural lapse.

➤ Further, the present demand of Rs. 32,91,372/- arisen on account of a procedural lapse on the part of appellant i.e recording the state tax / VAT credit of Rs. 30,89,501/- in the wrong heading (CGST) under the electronic credit ledger of CGST instead of correct heading SGST, otherwise which would have been eligible if taken in correct heading. In this regard, the appellant made reliance on the following case laws :

- (i) Mangalore Chemicals & Fertilizers Ltd Vs. Deputy Commissioner – 1991 (55) ELT 437 (SC);
- (ii) Formica India Division Vs. Collector of Central Excise – 1995 (77) ELT 511 (Delhi);
- (iii) Madhav Steel Vs. Union of India – 2016 (337) ELT 518 (Bom.);

Without prejudice to the above submissions, the department ought to have granted an opportunity to rectify the mistake by debiting the CGST electronic credit ledger with an amount of Rs. 30,89,501/- and allowing credit of the same under the SGST electronic credit ledger. The entire credit of Rs. 57,14,209/- including the amount of Rs. 30,89,501/- is the vested right of the appellants and cannot be taken away for simply entering into the wrong heading. The appellant further submitted that in similar circumstances, the Assistant Commissioner, CGST & Central Excise, Surat has passed the Order In Original Nos. (i) AC/O1/DIV-UBR/CGST/2021-22 dated 21.06.2021 in the matter of M/s. Premier Medical Corporation Pvt. Ltd. and (ii) AC/02/DIV-UBR/CGST/2021-22 dated 04.03.2022 has allowed such rectification to the appellants and dropped the demand subject to the condition that the assessee would debit the amount from the wrong heading in the electronic credit ledger and credit the amount in the correct heading in the electronic credit ledger.



3.4 The appellant further submitted that impugned order wrongly confirms levy of interest on the credit alleged to be wrongly availed. The impugned order directs levy of interest under section 73(5) of the CGST Act, 2017 on the ITC alleged to be disallowed. Interest liability is governed by the provision of Section 50 of the CGST Act, 2017. In view of the Section 50(1), 50(2) and 50(3) or Section 50 does not explicitly provide interest on alleged wrong availment of transitional credit through Form GST TRAN-1. The appellant submitted that interest under Section 50 of the CGST Act is levied in order to compensate the loss suffered by the Revenue and on account of delayed payment of tax. In the present case, there is no loss of revenue nor any delayed payment of tax, there can be no levy of interest on such amount.

3.5 The appellant submitted that impugned order wrongly confirms imposition of penalty. Penalty cannot be imposed as the appellants have acted in good faith. Moreover, there is bona-fide error on the part of the appellants. Penalty is not sustainable when demand is not sustainable.

The demand of duty, interest and penalty may be dropped and the proceedings be set aside and with consequential relief to the appellant.

PERSONAL HEARING :

4. Personal hearing in the present appeal was held on 09.05.2023, Mr Ambarish Pandey, Advocate, appeared in person on behalf of the appellant in the present appeal as authorized representative. Further a fresh personal hearing in the case was held on 27.06.2023. Mr. Ambarish Pandey, Advocate appeared in person on behalf of the appellant as "Authorised Representative". During P.H. he has submitted that it is a technical nature case, by mistake the appellant firm has taken credit in TRAN-1 under CGST head instead of SGST head. He relied upon the orders passed by the Asst. Commr., Surat Commissionerate, and requested to allow credit in SGST for debit in CGST account of ITC.

DISCUSSION AND FINDINGS:

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5. I have gone through the facts of the case, written submissions made by the 'appellant'. I find that the main issue to be decided in the instant case is whether the Transitional Credit of Rs. 32,91,372/- pertaining to VAT taken into CGST head in electronic ledger instead of SGST head should be admissible / allowed or not while submitting TRAN-1 under Section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Rules, 2017 and demand of interest under section 50 and imposition of penalty under Section 122(2) of CGST Act, 2017 is legal and proper or not?

5.1 I have carefully gone through the facts of the case available on records and submissions made by the 'appellant' in the appeal Memorandum. I find that the adjudicating authority is not disputing the entitlement or eligibility of credit pertaining to VAT amounting to Rs. 32,91,372/- which was available to the appellant as per their books of accounts and which was further claimed by the appellant under TRAN-1 immediately after rollout of GST. From the available records, submissions of the appellant as well as discussions and findings mentioned in the impugned order by the adjudicating authority, I

do not find any dispute about the entitlement and eligibility of input tax credit of Rs. 32,91,372/- pertaining to VAT by the adjudicating authority. The only issue in the case is the input tax credit of Rs. 32,91,372/- pertaining to VAT on which they have not paid any central tax have been taken into CGST head in electronic ledger instead of SGST head in the Financial Year 2017-18 which was claimed under table 7(a) of Form GST TRAN-1 filed by the appellant immediately after rollout of GST.

Firstly, I refer to the Section 140 of the CGST Act, 2017 read with similar provisions under Section 140 of Gujarat GST Act, 2017, which is re-produced as under:

Section 140 of CGST Act, 2017:

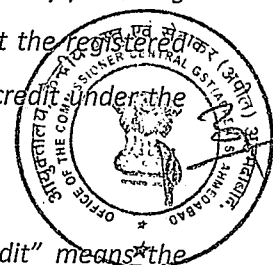
"140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law within such time and in such manner as may be prescribed: Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

- (i) *where the said amount of credit is not admissible as input tax credit under this Act; or*
- (ii) *where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or*
- (iii) *where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.*

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day within such time and in such manner as may be prescribed: Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Explanation.—For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to the following conditions, namely:—



- (i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (v) the supplier of services is not eligible for any abatement under this Act: Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994, but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,—

- (a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and
- (b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, within such time and in such manner as may be prescribed, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day: Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days: Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

(6) to (10)

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5.2 Further, I refer to the Rule 117 of the Central GST Rules, 2017 read with similar provisions under Rule 117 of Gujarat GST Rules, 2017, which is re-produced as under:

“Rule 117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day.-

(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in **FORM GST TRAN-1**, duly signed, on the common portal specifying therein, separately, the amount of

input tax credit ¹[of eligible duties and taxes, as defined in Explanation 2 to section 140, to which he is entitled under the provisions of the said section:

Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days.

Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.

²[(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in **FORM GST TRAN-1** by a further period not beyond ³[31st March, 2020]], in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.]

(2) Every declaration under sub-rule (1) shall-

(a) in the case of a claim under sub-section (2) of section 140, specify separately the following particulars in respect of every item of capital goods as on the appointed day-

(i) the amount of tax or duty availed or utilized by way of input tax credit under each of the existing laws till the appointed day; and

(ii) the amount of tax or duty yet to be availed or utilized by way of input tax credit under each of the existing laws till the appointed day;

(b) in the case of a claim under sub-section (3) or clause (b) of sub-section (4) or subsection (6) or sub-section (8) of section 140, specify separately the details of stock held on the appointed day;

(c) in the case of a claim under sub-section (5) of section 140, furnish the following details, namely:-

(i) the name of the supplier, serial number and date of issue of the invoice by the supplier or any document on the basis of which credit of input tax was admissible under the existing law;

(ii) the description and value of the goods or services;

(iii) the quantity in case of goods and the unit or unit quantity code thereof;

(iv) the amount of eligible taxes and duties or, as the case may be, the value added tax [or entry tax] charged by the supplier in respect of the goods or services; and

(v) the date on which the receipt of goods or services is entered in the books of account of the recipient.

(3) The amount of credit specified in the application in **FORM GST TRAN-1** shall be credited to the electronic credit ledger of the applicant maintained in **FORM GST PMT-2** on the common portal.

(4) (a) (i) A registered person who was not registered under the existing law shall, in accordance with the proviso to sub-section (3) of section 140, be allowed to avail of input tax credit on goods (on which the duty of central excise or, as the case may be, additional duties of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975, is leviable) held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.

(ii) The input tax credit referred to in sub-clause (i) shall be allowed at the rate of sixty per cent. on such goods which attract central tax at the rate of nine per cent. or more and forty per cent. for other goods of the central tax applicable on supply of such goods after the



appointed date and shall be credited after the central tax payable on such supply has been paid:

Provided that where integrated tax is paid on such goods, the amount of credit shall be allowed at the rate of thirty per cent. and twenty per cent. respectively of the said tax;

(iii) The scheme shall be available for six tax periods from the appointed date.

(b) The credit of central tax shall be availed subject to satisfying the following conditions, namely:-

(i) such goods were not unconditionally exempt from the whole of the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated in the said Schedule;

(ii) the document for procurement of such goods is available with the registered person;

⁴[(iii) The registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in **FORM GST TRAN-2** by 31st March 2018, or within such period as extended by the Commissioner, on there commendations of the Council, for each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period:]

⁵**Provided** that the registered persons filing the declaration in **FORM GST TRAN-1** in accordance with sub-rule (1A), may submit the statement in **FORM GST TRAN-2** by ⁶[30th April, 2020];

(iv) the amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in **FORM GST PMT-2** on the common portal; and

(v) the stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person.

5.3 In view of the Section 140 of the CGST Act 2017 read with Rule 117 of the CGST Rules, 2017, I find that there is no such provision in the GST Act or GST Rules, as the input tax credit of VAT can be taken in the head of CGST instead of SGST head or vice-versa, rather it is a strict provision for not to take ITC of CGST into SGST or UGST/IGST, ITC of SGST into CGST/UGST or IGST head and for this time to time instructions have been issued by the Central Government.

5.4 I further also bring kind attention of the appellant towards the Circular No. 180/12/2022-GST dated 9th September, 2022 and (ii) Circular No. 182/14/2022-GST dated 10th November, 2022 vide the CBIC, New Delhi has issued guidelines for filing /revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of the H'ble Supreme Court in the case of Union of India Vs. Filco Trade Centre Pvt Ltd., by opening common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e w.e.f 01.09.2022 to 31.10.2022 and thus, given ample opportunity to all the assessee to revise their TRAN-1 or TRAN-2 or to claim their transitional credit.

5.5 I also find that in the present case, the appellant has not grab the aforesaid opportunity offered by the CBIC to them by not filing / revising their TRAN-1 and I also do not find any documents that the appellant has filed any application before the department to revise their TRAN-1 in pursuance to the aforesaid Board's Circulars based on the H'ble Supreme Court's decision in case of Union of India Vs. Filco Trade Centre Pvt Ltd.

5.6 I also find from per Para-4 of the Show Cause Notice dated 14.02.2022 issued to the appellant the CERA has observed from the TRAN-1 statement that scrutiny of the supporting sample invoices and statement of TRAN-1 revealed that credit of central tax was taken through, as per the sample invoices only VAT was paid. I find that the appellant have paid VAT and they are eligible to take credit of input tax in VAT only on which they have paid tax.

5.7 Further, the appellant relied upon the decisions of the H'ble Supreme Court in the case of (i) Asst. Commr., Commercial Tax Department Vs. Shukla & Brothers reported at 2010 (254) ELT 6 (SC)= 2011 (22) STR 105 (SC) wherein it is observed that:

"9. In out view, it would neither be permission nor possible to state as a principle of law, that while exercising power of judicial review on administrative action and more particularly judgment of courts in appeal before the higher court, providing of reasons can never be dispensed with. The doctrine of audi alteram partem has three basis essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned speaking order. This has never been uniformly applied by courts in India and abroad."

and (ii) Bidhannagar (Salt Lake) Welfare Association Vs. Central Valuation Board & ors - 2007 (6) SCC 668,

"42. Principles of natural justice are based on two basic pillars:

- (i) Nobody shall be condemned unheard (audi alteram partem).
- (ii) Nobody shall be judge in his own case (nemo debet esse judex in propria sua causa.)

Duty to assign reason is, however, a judge-made law. It is considered to be a third pillar. (See Reliance Industries Ltd. v. Designated Authority [(2006) 4 SCC 368 : 2006 AIR SCW 4911].)

In the present case of the appellant, the appellant has been heard personally by the adjudicating authority as well as by the appellate authority before deciding the case and as there is no provision in the GST Act or GST Rules for taking ITC of CGST head into SGST head and vice-a-versa. Thus, the adjudicating authority has followed natural justice procedure in true spirit. Therefore, the present case laws are not relevant and applicable in the present matter.

5.7.1 Further the appellant has placed reliance on following case-laws:

- (i) Aadinath Industries Vs. Union of India- 2019 (30) GSTL 478 (Delhi)
- (ii) Lease Plan India Pvt. Ltd Vs. Govt. of NCT of Delhi
- (iii) RR Distributors Pvt. Ltd Vs. Commissioner, CGST, Delhi - 2021(6) TMI 10
- (iv) Arora & Co. Vs. Union of India & Ors. - 2020 (74) GSTL 290 (Delhi) [SLP pending before H'ble Supreme Court Vide Diary No. 5154/2020].

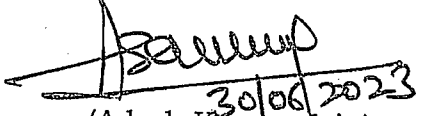
The appellant has not pointed out or narrated that how these case laws are applicable in the present case, they mentioned it in general way. I find that the in absence of any specific issue pointed out by the appellant, the abovementioned case-laws are not relevant and applicable in the present matter.

5.8 In view of the foregoing facts, I do not find any infirmity in the impugned order passed by the adjudicating authority and find that the impugned order is legal and appropriate in the eyes of law, and therefore I upheld the impugned order passed by the adjudicating authority and reject the present appeal on the grounds discussed above.


6. In view of above discussions, the *impugned order* passed by the *adjudicating authority* is legal and proper and as per the provisions of law to the above extent. Accordingly, I reject the present appeal of the "*Appellant*" in terms of Section 140 of the CGST Act, 2017 read with CGST Rules, 2017 and similar provisions of the SGST Act, 2017 read with SGST Rules, 2017.

7. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

7. The appeal filed by the appellant stands disposed of in above terms.


30/06/2023
(Adesh Kumar Jain)
Joint Commissioner (Appeals)
Date: 30.6.2023

Attested


(Tejas J Mistry)
Superintendent,
Central Tax (Appeals), Ahmedabad



By R.P.A.D.

To

M/s. Modern Denim Limited,
10 KM Mile Stone, Sarkhej Bavla N H No.8A,
Village Moraiya, Tal -Sanand, Ahmedabad, Gujarat - 382 210

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Excise, Appeals, Ahmedabad
3. The Commissioner, Central GST & C.Ex, Commissionerate-Ahmedabad North.
4. The Dy / Assistant Commissioner, CGST & C.Ex, Division-IV, Ahmedabad North Commissionerate.
5. The Additional Commissioner, Central Tax (System), Ahmedabad North.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File / P.A. File.

